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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE and)
NORTHWEST ENVIRONMENTAL)
DEFENSE CENTER,)
)
Plaintiffs,)
)
v.)
)
ATLANTA GOLD CORPORATION,)
)
Defendant.)

Case No. 1:11-cv-161-MHW

**DECLARATION OF JUSTIN
HAYES IN SUPPORT OF MOTION
FOR CIVIL CONTEMPT, AND
ADDITIONAL PENALTIES
AND ENFORCEMENT REMEDIES**

I, Justin Hayes, declare:

1. I am employed by the Idaho Conservation League, where I work as the Program Director. I am over 21 years of age and have personal knowledge of the matters set forth below. I have submitted prior declarations in this matter, which set forth my personal experience and education in more detail, along with my involvement for ICL with the Atlanta Gold mine and

Level 900 Adit discharges. *See, e.g., Dkt. Nos. 23, 62, 94.* I present this declaration in support of Plaintiffs' Motion for Civil Contempt and Additional Penalties and Enforcement Remedies, filed herewith.

2. Attached hereto as Exhibit 1, Parts 1-2, are true and accurate copies of Atlanta Gold's monthly Discharge Monitoring Reports (DMRs) for the Adit from January 2013 through May 2016, which I received through Freedom of Information Act requests I made to the U.S. Environmental Protection Agency. Part 1 to Exhibit 1 contains the DMRs for 2013-14, while Part 2 to Exhibit 1 contains the DMRs for 2015-16.

3. As shown on Exhibit 1, Atlanta Gold has continued to violate the Permit's effluent limitations for arsenic and iron regularly in the period since December 15, 2012 through May 2016, in violation of the Court's Injunction Order which set December 15, 2012 as the deadline for Atlanta Gold to fully comply with the Permit. These violations are summarized in the Table 1 below:

Table 1:
Arsenic and Iron Exceedences Reported by AGC,
Dec. 2012-May 2016

Atlanta Gold DMR	# of Reported Exceedences (from weekly samples)	
	Arsenic	Iron
05/1/2016 - 05/31/2016	3	3
12/1/2015 - 12/31/2015	3	
11/1/2015 - 11/30/2015	3	
9/1/2015 - 9/30/2015	1	
8/1/2015 - 8/31/2015	2	
7/1/2015 - 7/31/2015	2	
6/1/2015 - 6/30/2015	2	3
5/1/2015 - 5/31/2015	1	1
3/1/2015 - 3/31/2015	1	
1/1/2015 - 1/31/2015	1	
12/1/2014 - 12/31/2014	1	
11/1/2014 - 11/30/2014	4	

7/1/2014 - 7/1/2014	2	
6/1/2014 - 6/1/2014	2	4
5/1/2014 - 5/31/2014	3	
10/1/2013 - 10/31/2013	3	
8/1/2013 - 8/31/2013	1	
7/1/2013 - 7/31/2013	4	
6/1/2013 - 6/30/2013	2	
4/1/2013 - 4/30/2013	2	
3/1/2013 - 3/31/2013	4	
2/1/2013 - 2/28/2013	4	
1/1/2013 - 1/31/2013	5	
12/1/2012 - 12/31/2012	3	1
Total	59	12

4. Table 1 above shows 59 weekly exceedances of the Permit's arsenic limits and 12 exceedances of the iron limits. Because these exceedances are shown in Atlanta Gold's weekly monitoring reports, these numbers should be multiplied by seven to reflect Defendants' daily violations, as provided under the Clean Water Act. That calculation shows that Atlanta Gold has at least 497 daily violations of the Permit terms and Injunction Order, in the period December 2012 through May 2016.

5. Based on the discharge monitoring reports available to us at that time, Plaintiffs sent a notice letter to Atlanta Gold dated April 19, 2016, advising that Atlanta Gold was continuing to violate the Permit terms and the Court's Injunction Order, and notifying it that Plaintiffs would move to reopen this case and seek contempt remedies if Atlanta Gold did not come into compliance with the Permit effluent limits. Yet Atlanta Gold never responded to that notice letter; and subsequent DMRs that we received for the months of April and May 2016 revealed that the Level 900 Adit discharges continue to violate the Permit's arsenic and iron effluent limits, as shown in Table 1 above.

6. In light of the fact that Atlanta Gold's Adit discharges continue to regularly and repeatedly violate the Permit's effluent limitations, it is obvious that Atlanta Gold has not complied with the Court's Injunction Order because the treatment facilities and procedures it put into place in 2012 have proven inadequate to ensure compliance with the Permit's limits. Moreover, in the last three and a half years since the Court's December 15, 2012 deadline for ensuring full compliance with the Permit, Atlanta Gold has failed to install the treatment facilities necessary for full compliance. I believe that only a new order by the Court, holding Atlanta Gold in civil contempt and imposing enforcement remedies, such as those proposed by Plaintiffs in their Motion for Civil Contempt and Additional Violations and Enforcement Remedies, will be adequate to ensure that Atlanta Gold will comply with the Injunction Order, the Permit terms, and the Clean Water Act.

7. In October 2016, I submitted an additional Freedom of Information Act request to EPA to obtain subsequent discharge monitoring reports filed by Atlanta Gold for the Level 900 Adit since the May 2016 reports, but I have not yet received those reports. Plaintiffs will update the information in Table 1 upon receiving such reports.

8. I recently communicated with the U.S. Department of Justice to determine whether Atlanta Gold has made any or all of the \$2 million penalty payments that the Court ordered in its Final Judgment in this case. I was informed by Mr. Bill Humphries of the DOJ that, as of October 7, 2016, Atlanta Gold has paid a total of \$329,549.79 in the Court-ordered penalties, and that the last payment was received on or about 5/31/2016 for \$25,185.85.

9. The Court's final judgment (*Docket No. 125*) required Atlanta Gold to pay a total of \$850,000 in penalty payments through September 30, 2016. Atlanta Gold has thus paid only about 38% of the penalty payments due to date; and has failed to pay the total amount of

\$520,450.21 in penalty payments due by September 30, 2016. This further demonstrates Atlanta Gold's recalcitrance and civil contempt of the Court's orders, and supports the relief requested by Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3RD day of November, 2016, at Boise, Idaho.

/s/ Justin Hayes
Justin Hayes